

1-20-2016

# State v. Kraly Respondent's Brief Dckt. 43381

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

## Recommended Citation

"State v. Kraly Respondent's Brief Dckt. 43381" (2016). *Not Reported*. 2612.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/2612](https://digitalcommons.law.uidaho.edu/not_reported/2612)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 43381 & 43382
Plaintiff-Respondent,	)	
	)	Bonner County Case Nos.
v.	)	CR-2014-838 & CR-2014-6511
	)	
SHANE ANTHONY KRALY,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issues

1. Has Kraly failed to establish that the district court abused its discretion by relinquishing jurisdiction and executing his underlying unified sentence of three years, with one and one-half years fixed, imposed upon his guilty plea to attempted possession of methamphetamine in docket number 43381, and executing a reduced unified sentence of three years with one and one-half years fixed, imposed upon his guilty plea to introduction of major contraband into a correctional facility in docket number 43382?

2. Has Kraly failed to establish that the district court abused its discretion by denying his Rule 35 motions for sentence reduction in both cases?

I.

Kraly Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Kraly pled guilty to attempted possession of methamphetamine in docket number 43381 and the district court imposed a suspended unified sentence of three years, with one and one-half years fixed, to run concurrently with his sentence in an unrelated case, and placed Kraly on probation for three years. (R. Vol. II, pp.265-72.) Kraly filed a notice of appeal timely from the judgment of conviction. (R., Vol. II, pp.282-85, 337-41.)

As a condition of Kraly's probation, the district court ordered him to serve 30 days in the Bonner County jail, and subsequently modified this condition to allow Kraly to serve his jail time on the weekends. (R., Vol. II, pp.267, 278-81.) Just over a month after being placed on probation, Kraly brought two prescription Buprenorphine pills with him into the Bonner County Jail. (R., Vol. II., pp.292-94; Vol. III, pp.410-12.<sup>1</sup>) Kraly admitted he did not have a current prescription for Buprenorphine, and the state charged him with unlawful introduction of major contraband into a correctional facility and a persistent violator sentencing enhancement in docket number 43382. (R., Vol. II, p.293, Vol. III, pp.411, 414-15, 444-46.) The state also filed a Motion for Order to Show Cause in docket number 43381 alleging Kraly had violated his probation by incurring the new felony charge in docket number 43382. (R. Vol. II, pp.290-302, 309-27.)

Kraly admitted to violating his probation as alleged in docket number 43381, and pled guilty to the new charge in docket number 43382. (R., Vol. II, pp.343-44; Vol. III, pp.452-53, 476-77.) In exchange for Kraly's guilty plea, the state agreed to dismiss the persistent violator sentencing enhancement, agreed to recommend that the sentences

---

<sup>1</sup> Pursuant to the notice filed November 10, 2015, volume three of the clerk's record has been renumbered to begin at page 397.

run concurrently and agreed to recommend the district court retain jurisdiction. (R., Vol. III, p.470.) In docket number 43381, the district court revoked Kraly's probation and ordered his underlying sentence executed; however, it retained jurisdiction for 365 days. (R., Vol.II, pp.345-48, 352-55.) In docket number 43382, the district court imposed a unified sentence of four years, with two years fixed, to run concurrently with Kraly's sentence in docket number 43381, and retained jurisdiction for 365 days. (R., Vol. III, pp.481-85.)

After a period of retained jurisdiction, the district court relinquished jurisdiction in both cases and ordered Kraly's sentences executed; however, in docket number 43382, it *sua sponte* reduced Kraly's unified sentence to three years with one and one-half years fixed. (R., Vol. II, pp.359-62; Vol. III, pp.496-99.) Kraly timely appealed and timely filed a Rule 35 motion for sentence reduction in both cases, which the district court denied. (R., Vol. II, pp.364-70, 373-77, 384-87; Vol. III, pp.501-07, 510-14, 521-25.)

Kraly asserts the district court abused its discretion when it relinquished jurisdiction in both cases in light of his "willingness to change and become a contributing member of society," and his substance abuse issues. (Appellant's brief, pp.4-5.) The record supports the district court's decision to relinquish jurisdiction.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish

jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

Kraly is not an appropriate candidate for probation. Kraly failed to complete any of his programs while on his Rider (APSI, p.1), and, as NICI staff noted, “He actively tried to undermine the program by speaking negatively about staff, peers, and the structure of the program” (APSI, p.3). Despite staff’s use of Learning Experiences and counseling to change Kraly’s negative attitude, he repeatedly failed to take accountability for his behavior, and continued to be “close[d] minded” regarding any attempts to change his way of thinking. (See generally APSI.) Just before receiving NICI staff’s recommendation for relinquishment, Kraly incurred disciplinary sanctions for verbal abuse and assault; however, he continued to state he had done nothing wrong. (APSI, p.2; C-Notes, pp1-2.) In recommending relinquishment, NICI staff stated:

Mr. Kraly has chosen to not fully participate in the TC. His negative behavior had been brought to his awareness by his peers in the family and by staff. He dismissed their concerns by informing them that they are entitled to their opinion or quibbles over words in their statements. Mr. Kraly had not been using the accountability process, stating, ‘What other people do doesn’t concern me.’ The attitude that he has expressed is “I don’t need them and they don’t need me.” Mr. Kraly has not shown the desire to do what is necessary to complete the TC. He is not open to any help from his peers or staff in understanding how his thinking continues to support his addiction. He is not willing to follow rules that are meant to keep him and others safe. He is not a good candidate for probation.

(APSI, p.5 (as amended).) The district court considered all of the relevant information and reasonably determined that Kraly was not an appropriate candidate for community supervision, particularly in light of his refusal to change his criminal thinking and

behavior, and his failure to make adequate rehabilitative progress in the rider program. Given any reasonable view of the facts, Kraly has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

## II.

### Kraly Has Failed To Establish That The District Court Abused Its Discretion By Denying His Rule 35 Motions

Kraly next asserts the district court abused its discretion when it denied his Rule 35 motions for sentence reduction in light of the fact that he has a job, and his family depends on him financially and emotionally. (Appellant's brief, pp.5-6.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Kraly must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Kraly has failed to satisfy his burden.

In its order denying Kraly's Rule 35 motion, the district court articulated the correct legal standards applicable to its decision and set forth its reasons for denying Kraly's motion. (R., Vol. III, pp.510-14.) The state submits that Kraly has failed to establish an abuse of discretion, for reasons more fully set forth in the attached Order Denying Rule 35 Sentence Reduction and Notice of Right to Appeal, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's orders relinquishing jurisdiction and denying Kraly's Rule 35 motions.

DATED this 20th day of January, 2016.

\_\_\_\_\_  
/s/  
LORI A. FLEMING  
Deputy Attorney General

CATHERINE MINYARD  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have 20th day of January, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/  
LORI A. FLEMING  
Deputy Attorney General

# **APPENDIX A**



2015 MAY 27 A 8:31

CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	
	)	CASE NO. CR-2014-0000838
Plaintiff,	)	CR-2014-0006511
	)	
vs.	)	ORDER DENYING RULE 35
	)	SENTENCE REDUCTION
	)	AND
SHANE ANTHONY KRALY,	)	NOTICE OF RIGHT
	)	TO APPEAL
Defendant.	)	
	)	
	)	
	)	
	)	
	)	

I. INTRODUCTION

In CR-2014-0000838, on September 5, 2014, Defendant Shane Anthony Kraly, pled guilty to the crime of Attempted Unlawful Possession of a Controlled Substance, Methamphetamine, a felony, in violation of Idaho Code §§ 37-2732(c)(1) and 18-306. The Court entered a Felony Judgment (Probation) on September 5, 2014, sentencing Kraly to the custody of the Idaho State Board of Correction to be incarcerated for a total unified sentence not to exceed three (3) years, commencing with a fixed term of one and one-half (1½) years, to be followed by an additional one and one-half (1½) years indeterminate. The sentence was suspended, and Kraly was placed on supervised probation, subject to certain terms and conditions, for a period of three (3) years.

On October 14, 2014, the State filed a Motion for Order to Show Cause, requesting that Kraly be ordered to appear before the Court and show cause why he should not be found to have violated the terms of his probation by trying to sneak narcotics into the Bonner County Jail during a

scheduled turn-in for weekend jail commitment. On October 15, 2014, an Order to Show Cause was issued. As a result of this alleged probation violation, the State filed a new case against Kraly in CR-2014-0006511.

In **CR-2014-0006511**, on October 30, 2014, Kraly pled guilty to the crime of Unlawful Introduction of Major Contraband into a Correctional Facility, a felony, in violation of Idaho Code § 18-2510(3). The Court entered a Felony Judgment (Jurisdiction Retained) on November 3, 2014, sentencing Kraly to the custody of the Idaho State Board of Correction to be incarcerated for a total unified sentence not to exceed four (4) years, commencing with a fixed term of two (2) years, to be followed by an additional two (2) years indeterminate. Jurisdiction was retained for a period of three hundred and sixty-five (365) days. With regard to the probation violation in **CR-2014-0000838** stemming from the same offense, Kraly admitted to the violation, and the Court entered an Amended Judgment on Probation Violation (Jurisdiction Retained) on November 5, 2014, sending Kraly on a rider. Kraly received credit for time served in both cases.

On May 13, 2015, a jurisdictional review (rider) hearing was held in both cases. In **CR-2014-0000838**, an Amended Judgment and Disposition on Jurisdictional Review (Jurisdiction Relinquished) was entered, in which the Court relinquished jurisdiction, imposed sentence, and granted Kraly two hundred and forty-two (242) days credit for time served. In **CR-2014-0006511**, an Amended Judgment and Disposition on Jurisdictional Review (Jurisdiction Relinquished) was entered, in which the Court relinquished jurisdiction; modified the sentence pursuant to Idaho Criminal Rule 35<sup>1</sup> to a total unified sentence of three (3) years, with one and one-half (1½) years fixed, and one and one-half (1½) years indeterminate; and granted Kraly two hundred and twelve

---

<sup>1</sup> Idaho Criminal Rule 35 provides, in part: "... that no defendant may file more than one motion seeking a reduction of sentence under this Rule." Here, because the Court reduced the unified four-year sentence imposed in CR-2014-0006511 to three years *absent a filing by Kraly*, so that it would be the same as the unified three-year sentence imposed in CR-2014-0000838, the Court shall consider the Rule 35 motion Kraly filed in CR-2014-0006511.

(212) days credit for time served. The sentences are to run concurrently.

On May 20, 2015, Kraly filed a Motion for Correction or Reduction of Sentence – ICR 35 in both cases, asking that both sentences be reduced to probation. In his motions, he states that: “The night I admitted to the incident [sic] Sgt. Stevens assured me that I would only receive misdemeanors if I was honest with him. ... That was the agreement made, and I feel that it should be honored. ...” He also claims that his wife and children depend on him financially and emotionally.

## II. IDAHO CRIMINAL RULE 35

Pursuant to Rule 35 of the Idaho Criminal Rules, a motion to modify a sentence is to be considered and determined by the court without the admission of additional testimony and without oral argument unless otherwise ordered by the court in its discretion. Such a motion must be made within one hundred and twenty (120) days after the filing of a judgment of conviction, within one hundred and twenty (120) days after the court releases retained jurisdiction, or within fourteen (14) days after the filing of an order revoking probation. Kraly’s Rule 35 motions were filed on May 20, 2015, which was within one hundred and twenty (120) days after retained jurisdiction was relinquished in both cases on May 13, 2015. Therefore, the motions are timely.

A motion for reduction of a sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006). Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court’s discretion. *State v. Hedger*, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). If the sentence is found to be reasonable at the time of pronouncement, the defendant must then show that it is excessive in view of the additional information presented with the motion for reduction. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007); *State v. Fuhrman*,

137 Idaho 741, 746, 52 P.3d 886, 891 (Ct. App. 2002). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

Bearing these standards in mind, the Court has reviewed and considered Kraly's Rule 35 motions and the court record. It is evident from Kraly's commission of a new felony while he was out on probation that he is either unable or unwilling to adhere to the terms and conditions of probation or to the laws of this State. Therefore, in order to protect society, as well as achieve a measure of retribution and serve as a deterrent to other probationers in the community, the Court finds that it is necessary that Kraly serve the sentences imposed in these cases.

Considering these circumstances, and assuming the truth of the assertions in his Rule 35 motions, Kraly has not shown that the sentences were excessive when pronounced. Accordingly, after reviewing the motions for any new information not available at the time of sentencing, the Court finds that the sentences are not excessive. The motions are denied.

### **III. CONCLUSION AND ORDER**

NOW, THEREFORE, for the reasons set forth, IT IS HEREBY ORDERED that Kraly's Motions for Correction or Reduction of Sentence - I.C.R. 35 are DENIED.

### **NOTICE OF RIGHT TO APPEAL**


YOU ARE HEREBY NOTIFIED that you have a right to appeal this Order to the Idaho Supreme Court. Any notice of appeal must be filed not later than forty-two (42) days after the entry of the written Order in this matter.

ORDER DENYING RULE 35 SENTENCE REDUCTION - 4

117  
513

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 27 day of May, 2015.



**Barbara Buchanan**  
District Judge

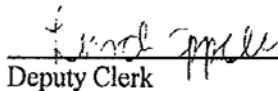
#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, or sent by electronic mail, or delivered via Courthouse Mail, this 27 day of May, 2015, to:

Idaho Dept. of Correction  
Sentencing Specialist, Records  
1299 North Orchard, Suite 110  
Boise, ID 83706  
[centralrecords@idoc.idaho.gov](mailto:centralrecords@idoc.idaho.gov)

Shane Greenbank  
Bonner County Chief Deputy Prosecutor  
Sandpoint, ID 83864  
**COURTHOUSE MAIL**

Daniel Taylor  
Bonner County Public Defender  
Sandpoint, ID 83864  
**COURTHOUSE MAIL**

  
Deputy Clerk

ORDER DENYING RULE 35 SENTENCE REDUCTION - 5

118  
514